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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

PIVO, HALBREICH, MARTIN & WILSON LLP,

Plaintiff and Respondent,

v.

PAULA LETHERBLAIRE,

Defendant and Appellant.

G055615

(Super. Ct. No. 30-2017-00941852)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Timothy J. Stafford, Judge. Dismissed.

Paula Letherblaire, in pro per., for Defendant and Appellant.

Buty & Curliano, Jason J. Curliano, Obdrej Likar and Laura Van Note for Plaintiff and Respondent.

* * *

After the law firm of Pivo, Halbreich, Martin & Wilson LLP (PHMW) sought a restraining order against Paula Letherblaire to protect one of its employees, Letherblaire stipulated to a restraining order against her. The trial court granted the requested stipulated restraining order. Letherblaire now challenges the stipulated order. However, the general rule is that a stipulated order is not appealable, and Letherblaire has not demonstrated that an exception to this rule applies in the instant case. Accordingly, we dismiss the appeal. We also deny her concurrently filed request for judicial notice.

FACTS

On September 9, 2017, PHMW filed a judicial council form petition for workplace violence restraining orders, seeking to protect Kenneth Pivo from Letherblaire. In a sworn declaration, Pivo stated that he is an attorney with PHMW. In January 2015, Letherblaire filed a medical malpractice lawsuit against Kaiser, and PHMW represented a Kaiser employee in that lawsuit. Pivo further stated that from the beginning of his firm's involvement in the lawsuit, Letherblaire has been "extremely hostile toward myself and my colleagues" and "has demonstrated bizarre and erratic behavior directed at myself and my colleagues." Pivo further stated that after the matter concluded on June 9, 2017, in PHMW's client's favor, Letherblaire sent a threatening e-mail to him and three other PHMW employees. In that August 15, 2017 e-mail, Letherblaire wrote that her "ULTIMATE GOAL IS TO LINE ALL OF YOU BASTARDS UP AGAINST A WALL AND UNLOAD . . . SO YOUR INTEREST IN WHAT HAPPENS NEXT WILL BE A 'CAUTIONARY TALE' AT THE VERY LEAST, AND WILL HOPEFULLY BE YOUR DEMISE AT BEST – IF THERE IS A GOD." The same e-mail concluded: "ALL OF THIS SHIT SHOULD BE COMING YOUR WAY WITHIN ONE WEEK OR SO. WISH I COULD SAY IT'S BEEN MY PLEASURE." Pivo stated that he feels

threatened and "afraid that she will follow through with her threats to harm me." The August 15 e-mail was attached as an exhibit to the declaration.

On September 22, 2017, Letherblaire filed a judicial council form response to petition for workplace violence restraining order. In the response, she checked the box entitled "I agree to the following orders (*specify*)," and wrote "As per stipulation." Letherblaire signed the stipulated workplace violence restraining order after hearing on page 4 of the form, under the statement: "I, Paula Letherblaire, understand and agree to the terms of this Stipulation/Order and agree to abide by its terms."

A hearing on the stipulated restraining order was held on September 29, 2017. Letherblaire did not appear. The court then granted the requested restraining order against her. On October 30, 2017, Letherblaire noticed an appeal from the restraining order.

On June 5, 2018, Letherblaire filed a motion for judicial notice with this court, seeking judicial notice of numerous documents related to her lawsuit against Kaiser. We deny the motion for judicial notice, as those documents are not relevant to the issue on appeal in this case.

DISCUSSION

As a general rule, a stipulated judgment or order is not appealable. (*Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 400.) This rule is based upon "'the theory that by consenting to the judgment or order the party expressly waives all objection to it, and cannot be allowed afterwards, on appeal, to question its propriety, because by consenting to it [she] has abandoned all opposition or exception to it.'" (*Ibid.*) There are several exceptions to the rule that no appeal may be taken from a stipulated judgment or order. First, where a judgment or order is void on its face due to a lack of fundamental jurisdictional power to hear or determine the case, an appeal may be heard. (*Reed v.*

Murphy (1925) 196 Cal. 395, 399-400 ["a decree or judgment which is void upon its face is open to attack by anyone, including the parties thereto, even though they consented to its rendition"].) Second, an appeal may be taken from a stipulated judgment or order where the party agreed to the judgment or order for the express purpose of facilitating an appeal. (*Norgart*, at pp. 400-401.) As the party seeking to avoid the general rule that we should not hear this appeal, Letherblaire bears the burden of demonstrating the contrary.

Here, the record does not show that Letherblaire agreed to the stipulated restraining order merely to facilitate an appeal. Letherblaire did not appear at the hearing on the stipulated restraining order to provide an explanation for her consent to the order, and the order itself does not expressly state that she agreed to the stipulated order to facilitate an appeal. Her reliance on *Thomsen v. Cayser* (1917) 243 U.S. 66 is misplaced. There, the high court determined that the "plaintiffs did not consent to a judgment against them, but only that, if there was to be such a judgment, it would be final in form instead of interlocutory, so that they might come to this court without further delay." (*Id*. at p. 83.) Here, no evidence in the record would support a similar finding, i.e., no evidence shows that Letherblaire did not consent to the restraining order.

In addition, there is no suggestion that the trial court lacked fundamental jurisdiction to enter the stipulated restraining order. Letherblaire argues that the trial court lacked jurisdiction to enter the restraining order because her alleged threatening conduct occurred during a prior litigation. She contends that any claims arising from her conduct can only be resolved by the prior court. We disagree, as PHMW's claim against Letherblaire — that she threatened its employee — is a different claim from her claim against Kaiser — that Kaiser committed medical malpractice. Thus, the trial court properly had jurisdiction over the instant claim. Accordingly, Letherblaire has failed to demonstrate that she can appeal from the stipulated restraining order on the ground either that the trial court lacked fundamental jurisdiction to enter the order, or that the order was agreed to merely to facilitate the appeal of that issue, or on any other ground.

DISPOSITION

The appeal is dismissed. PHMW shall recover its costs on appeal.

IKOLA, J.

WE CONCUR:

ARONSON, ACTING P. J.

GOETHALS, J.